

Before the
Federal Communications Commission
Washington, D.C. 20554

NOV 26 2002

In the matter of)

Amendment of Sections 73.606(b),)
Table of Allotments,)
Television Broadcast Stations; and 73.622(b),)
Table of Allotments, Digital Broadcast)
Television Stations (Asheville, North Carolina)
and Greenville, South Carolina))

MB Docket No. 02-363
RM-10604

NOTICE OF PROPOSED RULEMAKING

Adopted: November 18, 2002

Released: November 25, 2002

Comment Date: January 16, 2003

Reply Comment Date: February 1, 2003

By the Chief, Video Division:

1. The Commission has before it a petition for rule making filed by Meredith Corporation ("Petitioner"), licensee of Station WHNS(TV), channel 21 (FOX), and paired digital channel 57, Asheville, North Carolina, proposing the reallocation of channel 21 and paired digital channel 57, from Asheville to Greenville, South Carolina, and the modification of Station WHNS(TV)'s license accordingly.

2. Petitioner's petition is filed pursuant Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community MO&O*"); 47 C.F.R. § 1.420(i).

3. Asheville and Greenville are currently part of the Greenville-Spartanburg, South Carolina – Asheville, North Carolina Nielsen Designated Market Area ("DMA"). There are four NTSC television stations currently licensed to Asheville: WHNS(TV), channel 21 (FOX), WASV(TV), channel 62 (UPN), WUNF-TV, channel *33 (PBS), and WLOS(TV), channel 13 (ABC). Greenville, on the other hand, has only three NTSC television stations: WGGG-TV, channel 16, WNTV, channel *29 (PBS) and WYFF(TV), channel 4 (NBC).

4. In support of its proposal, Petitioner states that Greenville County, in which Greenville is located, has a population of 358,936, which is almost twice that of Buncombe

County, which contains Asheville.' Petitioner asserts that Greenville is the dominant population center of the market, as evidenced by the fact that 66% of the television households in DMA now are located in South Carolina. Petitioner states that virtually all of WHNS(TV)'s local advertising revenues come from South Carolina based businesses.² Petitioner also asserts that Greenville has become the economic center of the market, citing the fact that the amount of retail trade conducted in the Greenville area (\$9.2 billion in revenues) far surpassed the amount conducted in the Asheville area (\$2.2 billion) in 1997.³ Petitioner also notes that revenues in three economic categories tracked by the Census Bureau -- revenues generated by business engaged in arts and recreation, accommodation and food services, and professional, scientific and technical services -- are significantly greater in Greenville, in that the Greenville area generates eight times the revenues compared to the Asheville area (\$4.9 billion to \$575 million).⁴ Petitioner claims that the same results can be found on the city level, where the three categories of businesses generate \$3.4 billion in revenues in Greenville, but only \$471 million in Asheville. Petitioner states that when retail trade, professional services, accommodation and food, and arts and entertainment are combined the city of Greenville generates more than twice the economic activity of Asheville (\$5.4 billion compared to \$2.2 billion in revenues).⁵

5. Petitioner further contends that the reallocation of channel 21 to Greenville would result in a preferential arrangement of allotments, consistent with the television allotment priorities set forth in the *Sixth Report and Order on Television Allocations*, 41 FCC 148, 167 (1952).⁶ Petitioner opines that Asheville is "overserved" because more stations have been allotted to Asheville despite Greenville's higher population density. Petitioner asserts that the reallocation would officially recognize that WHNS(TV) is identified as a South Carolina station, rather than a North Carolina station. Additionally, Petitioner has performed engineering studies and indicates that the change of community of license can be made consistent with all present signal and interference requirements. Specifically, Petitioner notes that the city of license will not involve a change of transmission facilities, and therefore, no new interference concerns will be raised. Moreover, Petitioner indicates that WHNS(TV) will provide a city grade signal to Greenville with both its analog and digital facilities.

6. Finally, Petitioner states that a change in the city of license for WHNS(TV) will not deprive Asheville of any local service and commits to continuing service to Asheville and its environs by way of WHNS(TV)'s local news and other public affairs programming. In addition,

¹ See U.S. Census Data, http://www.census.gov/popist/archives/county/co-99-2/00C2_37.txt.

² See *Declaration of Ray Mirabella, General Manager of WHNS* (attached to Petition for Rulemaking)

³ See U.S. Department of Commerce, Economic and Statistics Administration, U.S. Census Bureau, <http://www.census.gov/epcd/www/97EC-SC.HTM>; http://www.census.gov/epcd/www/97EC_NC.HTM.

⁴ *Id.*

⁵ *Id.*

⁶ The Commission's television allotment priorities are to: (1) provide at least one television service to **all** parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all **parts** of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

Petitioner states that there will be no loss of a first or second service to Asheville should WHNS(TV) be reallocated.⁷

7. With respect to evaluating proposals to change the community of license, the Commission has stated: “The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.” *See Change of Community MO&O*, 5 FCC Rcd at 7097.

8. Based on the information before us, we are unable to determine whether petitioner’s proposal would result in a preferential arrangement of allotments. However, we believe that the proposal warrants consideration since the reallocation of channel 21 and paired digital channel 57 to Greenville, South Carolina, could provide a more accurate representation of which television stations viewers are watching within the Greenville-Spartanburg, South Carolina – Asheville, North Carolina DMA. As requested, we shall also propose to modify station WHNS(TV)’s license to specify operation on NTSC channel 21 and paired digital channel 57 at Greenville as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission’s Rules, we shall not accept competing expressions of interest in the use of analog channel 21 and digital channel 57 at Greenville, South Carolina.

9. Accordingly, we seek comment on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission’s Rules, for the communities listed below, to read as follows:

<u>CITY</u>	<u>PRESENT CHANNEL NOS.</u>	<u>PROPOSED CHANNEL NOS.</u>
Asheville, NC	13, 21, *33, 62	13, *33, 62
Greenville, SC	4, 16, *29	4, 16, 21, *29

9. We also seek comment on the proposed amendment to the DTV Table of Allotments, Section 73.622(b), of the Commission’s Rules, with respect to the communities listed below, to read as follows:

<u>CITY</u>	<u>PRESENT CHANNEL NOS.</u>	<u>PROPOSED CHANNEL NOS.</u>
Asheville, NC	*25, 45, 56, 57	*25, 25, 56
Greenville, SC	*9, 35, 59	*9, 35, 57, 59

⁷ The Commission has previously indicated that petitions for change of city of license will not be considered where the change will result in loss of only local service. 4 FCC Rcd at 4873.

11. Interested parties may file comments on or before January 16, 2003, and reply comments on or before February 1, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioner, or its counsel or consultant, as follows:

James E. Dunstan, Esquire
Garvey, Schubert & Barer
Fifth Floor
1000 Potomac Street, N.W.
Washington, D.C. 20007
(Counsel for Petitioner)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b). *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

13. For further information concerning this proceeding, contact Bradley E. Lerner, Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, and the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).
- (b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice *to* this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
- (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.). The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See Electronic Filing of Documents in Rule Making Proceedings, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial Overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to

experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, **an** original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.